

Decision **DRAFT DECISION OF ALJ WEISMEHL** (Mailed 5/23/2005)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Pacific Bell Telephone Company (U 1001 C), a Corporation, for Authority for Pricing Flexibility and to Increase Recurring Charges for Business Access Lines, Private Branch Exchange (PBX) Basic and Assured Trunks, and Non-Recurring Charges for Business Access Lines, Private Exchange (PBX) Basic Assured Trunks and Direct Inward Dialing (DID) Basic and Assured Trunks.

Application 00-09-061
(Filed September 27, 2000)

O P I N I O N

This matter was initiated a number of years ago by Pacific Bell Telephone Company, doing business as SBC California (SBC), to request pricing flexibility and a proposed new price structure for various products including Business Access Lines, Private Branch Exchange Basic and Assured Trunks, and Direct Inward Dialing Basic and Assured Trunks. The Utility Reform Network (TURN) and the Commission's Office of Ratepayer Advocates (ORA) filed protests to the application. TURN also filed a notice of intent to claim intervenor compensation.

As part of its Prehearing Conference (PHC) Statement TURN also moved to dismiss this application, in part premised on the then-anticipated New Regulatory Framework Triennial Review (NRF Review) and the reexamination of various unbundled network element costs for Pacific Bell in a "UNE relook" proceeding. A PHC was held on January 24, 2001. There has been no subsequent formal activity in this docket.

The Commission is interested in closing old proceedings that are not otherwise required for some active purpose to remain open. In addition, this matter may have been premised on information that is no longer current, either by the passage of time or by matters being considered in other proceedings.

For example, the NRF Review referred to by TURN is substantially completed (Rulemaking (R.) 01-09-001/Investigation (I.) 01-09-002) with both the service quality and audit phased finished. There remain some additional matters to conclude is what is generally referred to as NRF Phase III. The UNE Relook proceeding (Application (A.) 01-02-024 *et al.*) has been completed. In addition, other matters have been undertaken or are in progress that may impact the subject matter of this proceeding. These include a new rulemaking addressing a revision to the regulatory framework affecting all telecommunications carriers other than small local exchange carriers (R.05-04-005).

The assigned administrative law judge (ALJ) issued a ruling polling the parties on the following questions:

1. Is there a need for this proceeding to remain open?
2. If there is perceived to be a need for this matter to remain open, what is the basis for that view? Is there any need for the request to be modified or updated?
3. If there is a belief that this matter should go forward, what impact exists from other past or present intervening matters, including the NRF Review and the UNE relook proceedings?
4. If there is a belief that this matter should go forward, would it be prejudicial to any party for this matter to be closed and refilled to reflect current information in support of that request.

The parties were advised that absent a clear demonstration of a need to maintain this particular proceeding as a currently open and active docket, the

ALJ would prepare an order for the Commission dismissing this matter without prejudice.

Comments in response to the ruling were received from SBC, TURN and ORA.

SBC notes the delay that has occurred in the proceeding and, while contending the fault does not lie with SBC, states: “Given the delay, the record is stale and does not contain relevant information about the current marketplace or intervening matters that may have affected these services during the past four years.” While SBC requested that it be given an additional opportunity to address whether further changes in market conditions should lead to the record being supplemented or the application dismissed, it is clear that SBC does not consider the current record of this docket to be other than stale.

TURN concurs that the record is stale. TURN states that so much has changed since this application was filed that it would not make any sense to keep it open and amend it. TURN notes that even were that done, substantial portions of the supporting testimony and cost data would need to be revised, making the record complex to understand. TURN requests that the application be dismissed without prejudice.

ORA notes that its initial protest asked for dismissal of the application based on concerns over the showing then made. ORA discusses the vintage of data supporting the application and how dated it is now. ORA also notes the many other proceedings impacting the request in this application and the challenges of amending it. It recommends dismissal without prejudice.

An additional event that has occurred since this application was filed is the enactment of § 1701.5 of the Pub. Util. Code which mandates that proceedings categorized as ratesetting or quasi-legislative (this application is categorized as

ratesetting) be completed within 18 months. The vintage of this docket far exceeds that.

All the commenting parties, including the applicant, concur that the information that was the basis for this application is stale and that substantial amendment would be required, even if the proceeding were to go forward. It is, therefore, appropriate to close this docket without prejudice to SBC filing a new application, based on current information, and taking account of other factors, both within and outside Commission dockets, that have occurred and bear on the relief originally sought.

In its comments on the draft decision, TURN states that while it has no objection to the application being dismissed without prejudice, it is requesting language be added to recognize intervenor compensation related issues, specifically the ability for TURN to subsequently file a request to demonstrate its substantial contribution to this proceeding and seek compensation.

As noted by TURN, the Commission has done this previously in applications that have been terminated without a final decision on the substance of the application but where intervenors may still have engaged in activities of a type for which compensation might be appropriate. (*See, e.g.*, D.01-02-040, and D.02-01-031.) TURN is not requesting at this time any determination of what the outcome of review of such a request might be, but merely seeks to preserve the opportunity to make such a request.

As we have previously stated, “Public Utilities Code Sections 1801 *et seq.* establish a program of utility/ratepayer funding for intervenors in Commission proceedings. The Legislature intends that ‘[i]ntervenors be compensated for making a substantial contribution to proceedings of the commission, as determined by the commission in its orders and decisions.’ (§ 1801.3(d).) The

Legislature further intends that the intervenor compensation program “shall be administered in a manner that encourages the effective and efficient participation of all groups that have a stake in the public utility regulation process.”

(§ 1801.3(b).) Pursuant to the stated legislative intent, we will protect the right of eligible parties to request intervenor compensation.”

It is appropriate to do so in this proceeding as well.

Categorization and Need for Hearing

In Resolution ALJ 176-3048 dated October 5, 2000, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were necessary. This matter is being dismissed. Given this status public hearing is not necessary and the preliminary determinations made in Resolution ALJ 176-3048 are changed. Hearings are not necessary.

Comments on Draft Decision

The draft decision of the Administrative Law Judge (ALJ) in this matter was mailed to the service list in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.7 of the Commission’s Rules of Practice and Procedure. Comments were received from TURN on June 13, 2005. No reply comments were filed. TURN’s comments are addressed in the body of this decision.

Assignment of Proceeding

Susan P. Kennedy is the Assigned Commissioner and Philip Weismehl is the assigned ALJ in this proceeding.

Findings of Fact

1. This matter was initiated several years ago.
2. The Commission is interested in closing old dockets, not otherwise required to remain open.

3. Several proceedings and other events have occurred subsequent to the filing of this application that relate to its subject matter, including the NRF review and the UNE Relook proceedings.

4. Recent legislation requires that, absent certain factors not present here, ratesetting matters shall be completed within 18 months.

5. Without fault of the applicant, all parties concur that the record of this application is stale and that significant amendment would be required to update it.

Conclusions of Law

1. This application should be dismissed without prejudice to applicant SBC refilling a new application for the same or related relief based upon then-current information.

2. Hearings are not required and the preliminary determination should be changed.

3. The right of eligible parties to request intervenor compensation should be protected.

O R D E R

IT IS ORDERED that:

1. Application 00-09-061 is dismissed.
2. Eligible parties may request intervenor compensation.
3. Hearings are not necessary.

This order is effective today.

Dated _____, at San Francisco, California.